



570 Broad Street / Suite 1201 / Newark, NJ 07102
973.623.3000 Main / 973.623.0858 Fax / litedepalma.com
Newark / Philadelphia

December 19, 2022

VIA ECF

Honorable Evelyn Padin, United States District Court
United States District Court for the District of New Jersey
Martin Luther King Building and U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07101

**Re: *Jessica Robinson, et al. v. Jackson Hewitt Inc., et al.*
Case No. 2:19-cv-9066 (EP) (ESK)**

Dear Judge Padin:

Together with our co-counsel, this firm is counsel for Plaintiffs in the above-referenced matter. Plaintiffs write to respectfully request that Your Honor schedule a hearing on the parties' motions to exclude expert testimony.¹

While Plaintiffs are cognizant of the ordinary practice of resolution of motions without hearings, Plaintiffs believe the nature of the class action determination in antitrust proceedings warrant an in-person hearing to allow the parties to present evidence and argument and to provide the Court with an opportunity to ask questions, including to hear testimony from expert economists and statisticians. In this way, Plaintiffs respectfully submit an in-person evidentiary hearing will assist the Court to assess the Parties' respective experts' methodology.² *See In re Lamictal Direct Purchaser Antitrust Litig.*, 957 F.3d 184, 192-93 (3d Cir. 2020); *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 744-45 (3d Cir. 1994) ("[a judge] will often still believe that hearing the expert's testimony and assessing its flaws was an important part of assessing what conclusion was correct"); *see, e.g., In re: Suboxone (Buprenorphine Hydrochlorine and Naloxone) Antitrust Litig.*, 967 F.3d 264 (3d Cir. 2020); *In re: Valsartan, Losartan, and*

¹ Those motions include Defendants' Motion to Exclude All Testimony from Plaintiffs' Expert Dr. Phillip Johnson (Dkt. 193), Plaintiffs' Motion to Exclude All Testimony from Defendants' Expert Dr. Daniel Slottje (Dkt. 200), and Plaintiffs' Motion to Exclude All Testimony from Defendants' Expert Dr. Justin McCrary (Dkt. 203).

² On November 14, 2022, the Court administratively terminated Plaintiffs' motion for class certification and Defendants' motion to strike to first address the motions to exclude. Dkt. 249.



Honorable Evelyn Padin, U.S.D.J.
December 19, 2022
Page 2

Irbesartan Prods. Liab. Litig., 2022 WL 807343, at *1 (D.N.J. Mar. 17, 2022) (holding *Daubert* hearings to allow examination of expert witnesses). Plaintiffs particularly believe an in-person hearing would assist the Court because of the lengthy briefing that has been filed and the unique nature of these antitrust proceedings. *See* Dkt. 187 (finding additional briefing would be helpful and extending motions to exclude page limits from 30 pages to 45 pages).

On July 21, 2022, the parties filed a joint letter advising about the status of discovery and other issues to be addressed. *See* Dkt. 184. In that letter, the parties advised that they had conferred and jointly requested an in-person hearing to present evidence and argument on the parties' class certification and expert briefing. Before filing this letter, Plaintiffs reached out to Defendants who advised "Defendants no longer believe a hearing on the *Daubert* motions is necessary" and thus Defendants declined to join in this letter.

Thank you very much for your consideration.

Respectfully,

/s/ Bruce D. Greenberg

Bruce D. Greenberg

BDG:emp

cc: All Counsel of Record (via ECF)